

Generally, the selection of a new ALJ on remand is a decision for the Commissioner. Hartnett v. Apfel, 21 F. Supp.2d 217, 222 (E.D.N.Y. 1998) (citing Travis v. Sullivan, 985 F.2d 919, 924 (7th Cir. 1993)). However, when the conduct of an ALJ gives rise to serious concerns about the fundamental fairness of the disability review process, courts have remanded to a new ALJ. See 1 Soc. Sec. Disab. Claims Prac. & Proc. § 16:130 (2d ed.) (citing cases). Factors for consideration in this determination include: (1) a clear indication that the ALJ will not apply the appropriate legal standard on remand; (2) a clearly manifested bias or inappropriate hostility toward any party; (3) a clearly apparent refusal to consider portions of the testimony or evidence favorable to a party, due to apparent hostility to that party; (4) a refusal to weigh or consider

evidence with impartiality, due to apparent hostility to any party. Sutherland v. Barnhart, 322 F. Supp. 2d 282, 291-92 (E.D.N.Y. 2004).

The Court will not by-pass the Commissioner and order remand to a new ALJ. Because the Court finds no cause for concern that the ALJ will not comply with her legal obligation to fully and completely develop the record on remand, the Court will leave the decision as to whether a new ALJ should be assigned on remand to the sound discretion of the Commissioner. See Nunez v. Barnhart, No. 01-CV-5714(FB), 2002 WL 31010291, at *4 (E.D.N.Y. Sept. 9, 2002).

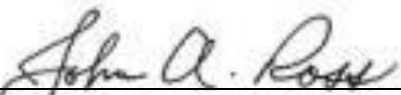
Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion for Remand [12] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **REMANDED** to the ALJ for consideration of the relevant period of alleged disability.

A separate Judgment will accompany this order.

Dated this 29th day of April, 2016.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE